

REMARKS

In response to the final Office Action mailed December 29, 2005, favorable reconsideration is respectfully requested in view of the above amendments and the following remarks. Claims 3, 4, 11, 15 and 18 are under examination in the application. By the above amendments, Applicants have amended claims 3, 11, 15 and 18, support for which can be found throughout the specification and claims as originally filed. Support for oligonucleotide probes and primers and their use in selectively detecting a polynucleotide of the invention can be found, *e.g.*, at page 33, line 3 to page 35, line 2; and at page 90, line 17 to page 91, line 21. Support for the use of oligonucleotide primers in illustrative nucleic acid amplification reactions can be found, *e.g.*, at page 43, line 23 to page 44, line 10. The above amendments are not to be construed as acquiescence to the Examiner's stated grounds for rejections and are made without prejudice to prosecution of any subject matter removed or modified by this amendment in a related divisional, continuation or continuation-in-part application.

Applicants wish to thank Examiner Zeman for the proposed amendments set forth in the Office Action dated December 29, 2005, and for the subsequent telephone interview of January 13, 2006, to discuss these and alternative amendments for addressing the remaining rejections. Applicants have amended the claims consistent with this telephone interview in an effort to place the application in condition for allowance.

Claims 3, 4, 11, 15 and 18 remain rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. According to the Examiner, the phrase "a sequence that varies from SEQ ID NO: 302 due to differences in codon usage as a result of the degeneracy of the genetic code" is vague and indefinite and one of skill in the art would not be apprised of the limits of the claim.

Applicants respectfully traverse this rejection and submit that an artisan of ordinary skill in the art would indeed understand the meaning of the subject language as well as the metes and bounds of the claims in view of the specification as originally filed and further in

view of the level of knowledge in the art. However, for purposes of clarity and to advance prosecution of this application, claim 18, part (a), has been amended to replace the phrase “a sequence provided in SEQ ID NO:302, or a sequence that varies from SEQ ID NO:302 due to differences in codon usage as a result of the degeneracy of the genetic code,” with the phrase, “the contiguous nucleotide sequence provided in SEQ ID NO:302, or a contiguous nucleotide sequence encoding the polypeptide of SEQ ID NO:305.” In addition, claim 18, part (b), has been amended to replace the phrase “a sequence provided in SEQ ID NO:303, or a sequence that varies from SEQ ID NO:303 due to differences in codon usage as a result of the degeneracy of the genetic code,” with the phrase, “the contiguous nucleotide sequence provided in SEQ ID NO:303, or a contiguous nucleotide sequence encoding the polypeptide of SEQ ID NO:306.” Thus, the amended claims are drawn with specificity and particularity to isolated polynucleotides of SEQ ID NOs:302 and 303, as well as isolated polynucleotides encoding the polypeptides encoded by SEQ ID NOs:302 and 303. Reconsideration is respectfully requested.

Claims 3, 4, 11, 15 and 18 stand rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the enablement requirement. More particularly, the Examiner views the specification as not adequately teaching the artisan of ordinary skill how to make and use sequences “that vary from SEQ ID NO: 302/303 due to differences in codon usage as a result of degeneracy of the genetic code.”

Applicants respectfully traverse this rejection. An artisan of ordinary skill in the art would understand how to practice the invention as claimed without undue experimentation and with a reasonable expectation of success. However, for purposes of clarity and in an effort to advance prosecution, claim 18, part (a), has been amended to replace the phrase, “a sequence provided in SEQ ID NO:302, or a sequence that varies from SEQ ID NO:302 due to differences in codon usage as a result of the degeneracy of the genetic code,” with the phrase, “the contiguous nucleotide sequence provided in SEQ ID NO:302, or a contiguous nucleotide sequence encoding the polypeptide of SEQ ID NO:305.” In addition, claim 18, part (b), has been amended to replace the phrase, “a sequence provided in SEQ ID NO:303, or a sequence that varies from SEQ ID NO:303 due to differences in codon usage as a result of the degeneracy of

the genetic code,” with the phrase “the contiguous nucleotide sequence provided in SEQ ID NO:303, or a contiguous nucleotide sequence encoding the polypeptide of SEQ ID NO:306.” The amended claims are thus drawn to isolated polynucleotides of SEQ ID NOs:302 and 303, as well as isolated polynucleotides encoding the polypeptides encoded by SEQ ID NOs:302 and 303. Applicants respectfully submit that a skilled artisan could readily make and use the claimed polynucleotides in view of the instant specification without undue experimentation and with a reasonable expectation of success. Reconsideration of this rejection is respectfully requested.

Claims 3, 4, 11, 15 and 18 stand rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by Frudakis in WO 98/45328. According to the Examiner, claim 18 employs sequences, “that vary from SEQ ID NO: 302/303 due to differences in codon usage as a result of degeneracy of the genetic code.” The Examiner also states that claim 18 recites “complements” of the sequence which are not necessarily full length. The Examiner further asserts that Frudakis describes primers that allegedly meet the primer, degenerate variant and/or complement recitations present in the claims.

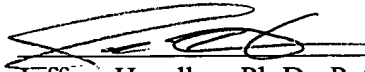
Applicants respectfully traverse this rejection. As set forth above, claim 18 has been amended to remove the phrase “a sequence that varies from SEQ ID NO: 302 due to differences in codon usage as a result of the degeneracy of the genetic code.” In addition, claim 18 has been amended to recite that the complements of part (c) are “full length” complements. Further still, claim 15 has been amended such that the claimed oligonucleotide probe is one that is capable of selectively detecting the polynucleotide of claim 18 in a hybridization assay, and the claimed oligonucleotide primers are capable of selectively amplifying a polynucleotide of claim 18 in a nucleic acid amplification reaction. Frudakis fails to disclose each and every element as claimed and, accordingly, fails to anticipate the presently claimed invention. Reconsideration is respectfully requested.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Application No. 09/924,400
Reply to Office Action dated December 29, 2005

The above amendments are believed to be consistent with the telephonic Examiner interview of January 13, 2006, and are submitted to place the application in condition for allowance. However, to the extent that any outstanding issues remain with respect to the amended claims, the Examiner is encouraged to contact the undersigned at (206) 694-4885 with any questions, comments and/or suggestions.

Respectfully submitted,
SEED Intellectual Property Law Group PLLC



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